

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201602705	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/19/2016 1:31 AM	Location of Incident: [REDACTED]	Precinct: 77	18 Mo. SOL 9/19/2017	EO SOL 9/19/2017	
Date/Time CV Reported Wed, 03/30/2016 3:46 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 03/30/2016 3:46 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			Unknown
2. POM Craig McGrath	26900	955165	077 PCT
3. POM Michael Robertson	20627	955392	077 PCT
4. POM Matthew Fagan	12114	954785	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Dustin Edwards	00000	938420	PBBN SU
2. POM Marcel Francis	05240	948983	PBBN SU
3. POM Patrick Craig	26996	945623	077 PCT
4. POF Michelle Giglio	18126	954862	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Craig McGrath	Abuse: Police Officer Craig McGrath stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Michael Robertson	Abuse: Police Officer Michael Robertson stopped § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Craig McGrath	Force: Police Officer Craig McGrath used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Matthew Fagan	Discourtesy: Police Officer Matthew Fagan spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Matthew Fagan	Force: Police Officer Matthew Fagan used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F. Officers	Force: Officers used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Michael Robertson	Abuse: Police Officer Michael Robertson frisked § 87(2)(b) [REDACTED]	[REDACTED]
H.POM Matthew Fagan	Abuse: Police Officer Matthew Fagan frisked § 87(2)(b) [REDACTED]	[REDACTED]
I. Officers	Abuse: Officers searched § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB on March 30, 2016, via the online website. The case remained open longer than 90 days because the subject officer of § 87(2)(b)'s force allegations was one of the officers who arrived on scene as backup, and not one of the original officers to stop him. Identifying that officer delayed the investigation.

On March 19, 2016, at approximately 1:31am, § 87(2)(b) was stopped § 87(2)(b) in Brooklyn by PO Craig McGrath and PO Michael Robertson of the 77th Precinct (**Allegation A** and **Allegation B**) while the officers were canvassing for an armed suspect. § 87(2)(b) ran from the officers and was apprehended directly across the street from this location. § 87(2)(b) alleged the following: PO McGrath took § 87(2)(b) to the ground forcefully, causing him to land on his stomach (**Allegation C**). PO Matthew Fagan of the 77th Precinct, who arrived seconds into the struggle, allegedly told § 87(2)(b) to "Shut the fuck up," then punched § 87(2)(b) on the right side of nose and cheek area with a closed fist, drawing blood (**Allegation D** and **Allegation E**). An unidentified officer allegedly kicked § 87(2)(b)'s legs (**Allegation F**). § 87(2)(b) alleged that while he was rotating his head back and forth to wipe some of the blood off of his face, an unidentified officer picked his head up from behind and banged it back down on the pavement, causing swelling to his forehead (**within Allegation F**).

§ 87(2)(b) reported that, while he was on the ground and being handcuffed, PO Robertson and PO Fagan each frisked him (**Allegation G** and **Allegation H**) and that an unidentified officer searched his front and back pants pockets (**Allegation I**).

After Lt. Dustin Edwards of Patrol Borough Brooklyn North Specialized Unit arrived on scene and verified that § 87(2)(b) was not the perpetrator. § 87(2)(b) was released at this time and a Stop, Question, and Frisk, Report was prepared by PO McGrath (BR 3). No summonses issued and no arrests were made on scene.

Video footage was obtained for this case from the deli grocery located at § 87(2)(b). It depicts the officers' initial approach and § 87(2)(b)'s flight, which will be discussed in Allegations A and B, but does not show the actual apprehension occurring across the street. § 87(2)(b) does appear in the footage again after he is released, which will be discussed in Allegations E and G (full video contained in BR 13).

Mediation, Civil and Criminal Histories

- During his sworn statement, § 87(2)(b) declined to mediate his complaint on the grounds that he does not believe mediation will change police procedure.
- According to a FOIL request filed with the Office of the New York City Comptroller on September 1, 2016, no notices of claim have been filed in regard to this incident (BR 22).
- § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (BR 2).
- During his three-year tenure with the NYPD, PO McGrath was the subject of two other CCRB allegations, involving one case which was both closed as complainant uncooperative during the course of this investigation.
- This is PO Robertson's first CCRB complaint during his three-year tenure with the NYPD.
- This is PO Fagan's first CCRB complaint during his three-year tenure with the NYPD.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described the subject officer of Allegations D and E as a white male, taller than PO McGrath or PO Robertson, with brown hair and in uniform. Most importantly, he stated that this officer was the first officer to arrive on scene after § 87(2)(b) had been taken to the ground, and that this officer emerged from a marked police. PO Fagan is a 6'2" tall white male with brown eyes, and he acknowledged that he is his partner (PO Michelle Giglio, who is female) were the first unit to arrive on scene and assist in § 87(2)(b)'s apprehension. Based on the above, Allegations D, E, and H are pled against PO Fagan.
- § 87(2)(b) was handcuffed while chest-down on the ground. Due to the officers being largely behind him during his apprehension, he stated that he could not see the officer responsible for allegedly kicking him, nor the officer allegedly hitting his head against the pavement. No officers interviewed acknowledged performing these actions, nor did any of them testify to observing another officer doing so. As such, Allegation F is being pled against "Officers."
- Similarly, § 87(2)(b) alleged that after he was frisked on the ground, either or both PO Robertson and PO Fagan searched his pockets. Neither of these two officers acknowledged searching § 87(2)(b)'s pockets, nor did any other officer testify to witnessing the search occur. Allegation I is therefore pled against "Officers."

Allegation A – Abuse of Authority – Police Officer Craig McGrath stopped § 87(2)(b)

Allegation B – Abuse of Authority – Police Officer Michael Robertson stopped § 87(2)(b)

It is undisputed that PO Robertson and PO McGrath stopped § 87(2)(b) in Brooklyn. § 87(2)(b) reported this allegation, the two officers acknowledged stopped him, and the surveillance footage obtained from the deli grocery at this location captures this occurring. § 87(2)(g)

§ 87(2)(b) reported walking directly from the Kingston Avenue subway stop toward his friend's house. He stopped at the deli grocery at § 87(2)(b) to purchase an Arizona iced tea and a pack of cigarettes. He was wearing red sneakers, blue jeans, a red Yankees hat with a black rim, and a black hoodie with the hood up. While standing at the deli window located on the

storefront, waiting for his change, he heard sounds of a vehicle pulling up and of vehicle doors closing. PO Robertson approached § 87(2)(b) who was on the sidewalk, saying, “Excuse me, sir.” § 87(2)(b) testified that he immediately moved two or three paces away along the sidewalk, then began running across the street. He stated that he ran because he was afraid and that the officers’ approach made him feel like he was already guilty (BR 4).

PO McGrath and PO Robertson both testified that a call had come over the radio from the Patrol Borough Brooklyn North Specialized Unit, supervised by Lt. Dustin Edwards, requesting a perimeter of the area. The call specified that one perpetrator was outstanding, having fled in foot from Park Place between Nostrand and New York Avenues, and was suspected of being in possession of a firearm. The description that both PO McGrath and PO Robertson recalled, and each noted as such in their memo books, was a “black male wearing all black and red sneakers, running eastbound on Park Place”(BR 5, BR 6).

PO McGrath testified that, while canvassing for this suspect, they observed § 87(2)(b) on Park Place and walking toward Albany Avenue. He was “walking faster than usual” and had visibly labored breathing, which led PO McGrath to believe that § 87(2)(b) had been running immediately prior. § 87(2)(b) was wearing red sneakers and black clothing. As § 87(2)(b) walked toward the deli grocery at § 87(2)(b) he looked in the officers’ direction and PO McGrath believed that he had seen them. He slowed down his walking pace at this point. PO McGrath requested that the police dispatcher repeat the description again. After confirming that § 87(2)(b) matched it in gender, race, and clothing, he and PO Robertson both exited from their vehicle and began approaching § 87(2)(b) in what PO McGrath described as a “very casual” manner. § 87(2)(b) instantly took off running across Park Place, without saying anything first (BR 5).

PO Robertson corroborated PO McGrath’s testimony, with the exception of PO Robertson stating that § 87(2)(b) attempted to hide his face with his hood upon ostensibly seeing the officers’ vehicle. He also stated that § 87(2)(b) appeared to be walking at a regular pace when he observed him, and that the officers stopped him on the basis of him matching the description(BR 6).

Lt. Edwards, who had put over the original description of the outstanding suspect, arrived on scene after § 87(2)(b) had been successfully apprehended. He testified that, though § 87(2)(b)’s clothing did match the description of the suspect’s, he knew immediately that § 87(2)(b) was not the perpetrator because he was significantly heavier and taller than the man for whom he was looking (BR 7).

According to records of police radio communications from March 19, 2016, reflected in Event Information § 87(2)(b) at 1:27am, Lt. Edwards of Patrol Borough Brooklyn North Specialized Unit requested a perimeter between Prospect Avenue and Park Place and between Nostrand Avenue and New York Avenue. The stated purpose was to locate one outstanding perpetrator suspected of being in possession of a firearm, whom Lt. Edwards described as a 5’6” tall black male wearing all black and red sneakers, who had fled eastbound on Prospect Avenue toward Nostrand Avenue. At 1:31am, PO McGrath went over the radio to report that he had stopped one individual at Park Place and Albany Avenue (BR 12).

The footage depicts § 87(2)(b) walking toward the deli grocery and the officers pulling their vehicle next to him. As § 87(2)(b) testified, he is seen wearing red sneakers, a black hoodie, a black and red hat, and dark pants. § 87(2)(b) is a 6'2" tall black male (BR 13).

The Stop, Question, and Frisk Report that PO McGrath completed following this incident indicates that § 87(2)(b) was stopped because he fit a description. It notes that § 87(2)(b) changed directions/fled at sight of the officers and that the location was proximate to the crime location (BR 3).

Officers have reasonable suspicion to stop individuals where the following three factors are present: a matching general description of the suspect and the defendant, close proximity to the site of the crime, and short passage of time between commission of the crime and observation of the suspect. People v. Holland, 4 A.D.3d 375, 770 N.Y.S.2d (2004)(BR 14).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation C – Force – Police Officer Craig McGrath used physical force against § 87(2)(b)

§ 87(2)(b) acknowledged running from the officers after PO Robertson said, “Excuse me, sir.” The video footage likewise shows him running across the street as soon as the officers exit from their marked van and begin approaching him (BR 13). PO McGrath acknowledged being the

first officer to catch up to § 87(2)(b) and acknowledged taking him to the ground forcibly.
§ 87(2)(g)

§ 87(2)(b) reported that PO McGrath grabbed him by the right arm while pushed his legs down to the ground, causing him to land on his stomach. He reported that his lip was cut and bled as a result of hitting the ground (BR 4).

PO McGrath testified that he gave verbal commands to § 87(2)(b) during the brief time that he was chasing him. His first point of contact was with § 87(2)(b) was with his hoodie sweatshirt, which he grabbed, causing them to both fall to the ground. He was unsure how § 87(2)(b)'s body made contact with the ground, but knew that it was front-down. PO Robertson was en route to § 87(2)(b) when PO McGrath took him to the ground, and PO Robertson described the maneuver as a “tackle” which involved PO McGrath grabbing § 87(2)(b)'s arm and chest areas. He also did not see what position § 87(2)(b) landed in on the ground (BR 5, BR 6).

Officers are to use reasonable force necessary. Patrol Guide Procedure 221-02 (BR 15). New York State Penal Law Section 35.30 holds that officers may use force to prevent escape from police custody (BR 22).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b).

Allegation D – Discourtesy – Police Officer Matthew Fagan spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that while he was on the ground and several officers were surrounding him, PO Fagan repeatedly asked § 87(2)(b) “Where’s the gun?” § 87(2)(b) replied that he did not have a gun, and he alleged that PO Fagan then told him to “Shut the fuck up.”(BR 4).

PO Fagan denied telling § 87(2)(b) to “Shut the fuck up,” or using any version of the word “fuck” toward him. The other officers in the direct vicinity - PO Giglio (his partner), PO Robertson, and PO McGrath, all testified that they did not hear any officer make this statement to § 87(2)(b). None of the other three uninvolved officers interviewed for this case reported hearing any officer make this statement (BR 5- BR 11).

The video footage neither captured the site of § 87(2)(b)'s apprehension, nor had audio. No witnesses were located to provide testimony in regard to this incident.

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Allegation E – Force – Police Officer Matthew Fagan used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Fagan, after asking him about a gun and allegedly telling him to “Shut the fuck up,” immediately then punched § 87(2)(b) in the right side of his nose and cheek area with a closed fist. This punch drew blood from § 87(2)(b)'s nose (BR 4).

PO Fagan denied punching § 87(2)(b) in the face or anywhere on his body, and denied seeing any other officer do so. He testified that he assisted PO Robertson and PO McGrath in apprehending § 87(2)(b) by positioning himself on § 87(2)(b)'s left side. PO Fagan was near § 87(2)(b)'s left arm area and PO Giglio was positioned at § 87(2)(b)'s left leg area. PO Fagan looped his arm underneath § 87(2)(b)'s left arm in an attempt to pull the arm out from underneath § 87(2)(b)'s body, where the arm was presently tucked. He also instructed § 87(2)(b) to place his hands behind his back. He described § 87(2)(b) as moving his torso around in an attempt to shake free but was not otherwise moving his body. PO Fagan estimated that it took about two minutes from the start of his involvement to handcuff § 87(2)(b) and he did not know who placed the handcuffs on him. By that time, 6-8 total officers were involved in apprehending § 87(2)(b) (BR 8).

PO Giglio, alternatively, testified that she was positioned on § 87(2)(b)'s right side, by his shoulder area, attempting to grab onto § 87(2)(b)'s right arm. She could not recall in what position PO Fagan was assisting. She reported that § 87(2)(b) stiffened his right arm, lying on top of it, and making it difficult for her to move that arm into handcuff position. Apart from this form of resistance, § 87(2)(b) was not otherwise physically resisting. She denied seeing any officer punch § 87(2)(b) or bang his head against the pavement (BR 9).

It is undisputed that § 87(2)(b) bled as a result of this incident. § 87(2)(b) testified that the blood was coming from his nose and attributed this injury to PO Fagan's punch. The majority of the officers on scene testified to seeing blood and/or getting blood on their own hands (see PO Fagan, PO McGrath, PO Robertson, and Lt. Edwards), but only PO Robertson testified to seeing a laceration to § 87(2)(b)'s face and he was unable to specify where on his face he observed that laceration. Lt. Edwards, according to both § 87(2)(b) and Lt. Edwards's own testimony, asked § 87(2)(b) whether he wanted an ambulance and § 87(2)(b) declined. Lt. Edwards testified that he asked § 87(2)(b) regarding medical attention after seeing blood on his own hands once he removed § 87(2)(b)'s handcuffs. He saw no specific injury or blood coming from § 87(2)(b)'s body.



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§ 87(2)(b) testified that, after Lt. Edwards removed his handcuffs and released him, he returned to the bodega to pick up his items. The footage above (BR 16) shows § 87(2)(b)'s return to the bodega. Although it does not capture his face area clearly enough to conclusively show injuries or lack thereof, it does depict § 87(2)(b) checking his reflection in his cell phone and opening and closing his mouth and teeth, consistent with checking for injury.

§ 87(2)(b) obtained medical attention § 87(2)(b) days after this incident at § 87(2)(b) Hospital. He was diagnosed with a right wrist contusion and an abrasion to the 4th finger on his left hand. He was given antibiotic ointment and bandages. In his CCRB statement, § 87(2)(b) acknowledged that the swelling to his forehead had gone down by the time he went to the hospital and that there were no other lasting injuries. His chief complaint involved his right hand, which had a preexisting injury exacerbated by the police incident (see medical records and BR 4).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F – Force – Officers used physical force against § 87(2)(b)

§ 87(2)(b) reported two other additional types of force used against him during the struggle. First, he reported feeling an officer kick at his legs, but could not see who that officer was because he or she was positioned behind § 87(2)(b) at the time. Similarly, § 87(2)(b) alleged that, while § 87(2)(b) rotated his head around in an attempt to wipe some of the blood off of his face, an officer picked his head up and banged it back down on the pavement. This action resulted in a raised bump to § 87(2)(b)'s forehead, of which he provided the CCRB photographs (BR 4, BR 17-19).

All of the officers interviewed for this case denied striking § 87(2)(b)'s head against the ground in such a way, and they all denied seeing any other officer do so. Though some of the officers interviewed testified that § 87(2)(b) was moving his body a great deal – while other officers testified that he moved only his arms, or that he stiffened his body but was not moving around – none of them stated that § 87(2)(b) was moving his head around.

As discussed, § 87(2)(b)'s medical records contain no notations about the bump to his head, which aligns with § 87(2)(b)'s testimony that there was no lasting injury to that area by the time he obtained medical attention two days after this incident.

§ 87(2)(b), § 87(2)(g)

Allegation G – Abuse of Authority – Police Officer Michael Robertson frisked § 87(2)(b)

Allegation H – Abuse of Authority – Police Officer Matthew Fagan frisked § 87(2)(b)

All testimony and documentary evidence points to the fact that § 87(2)(b) was frisked on scene. The Stop, Question, and Frisk report reflects that he was frisked, and § 87(2)(b) alleged that he was frisked.

§ 87(2)(b) testified that two officers, identified by the investigation as PO Robertson and PO Fagan, each frisked him while he was face-down on the ground being handcuffed. They frisked his legs, thighs, and torso areas (BR 4).

PO Robertson testified that § 87(2)(b) was frisked by an officer after being handcuffed and moved into a standing position. He could not recall whether he was the officer to frisk him, or whether another officer did so (BR 6).

PO McGrath, who completed the Stop, Question, and Frisk report, denied frisking § 87(2)(b) and testified that he did not know whether any other officers had done so. After reviewing the report, which states that § 87(2)(b) was frisked, PO McGrath stated that he did not recall having filled that out. He reiterated that he did not frisk § 87(2)(b) himself but that, based on the circumstances of the stop, he assumes that § 87(2)(b) was frisked. He could not recall which officer did so (BR 5).

Lt. Edwards, who arrived on scene once § 87(2)(b) was already standing up and handcuffed, testified that he did not observe any officer frisk him. He advised PO McGrath and PO Robertson to obtain § 87(2)(b)'s information for the purpose of filling out a Stop, Question, and Frisk report, and advised that § 87(2)(b) be then released without summons (BR 7).

PO Fagan denied frisking or searching § 87(2)(b) and stated that he did not observe any other officer do so (BR 7). All of the other officers interviewed for this case (PO Michelle Giglio, PO Patrick Craig, and PO Marcel Francis) denied seeing any officer frisk § 87(2)(b).

The Stop, Question, and Frisk Report that PO McGrath filled out following this incident indicates that § 87(2)(b) was frisked because he was suspected of a violent crime (BR 3).

PO Robertson could not recall whether or not he personally frisked § 87(2)(b) but affirmed that a frisk did occur while he was on scene. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

A frisk requires reasonable suspicion that an individual is armed. People v. De Bour 40 N.Y.2d 210 (1976)(BR 20).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED].

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation I – Abuse of Authority – Officers searched § 87(2)(b)

[REDACTED] reported that, after both PO Robertson and PO Fagan frisked him while on the ground, one or both of these two officers entered his front and back pant pockets. No items were removed. As the officers were behind him at the time and these alleged searches occurred simultaneously with § 87(2)(b)'s apprehension, he had difficulty determining which of these two officers performed the search.

PO Robertson testified that he could not recall whether or not he searched § 87(2)(b). He also could not recall whether § 87(2)(b) was searched by any officer. PO McGrath testified that he did not know whether or not § 87(2)(b) was searched, but that he knew that he personally did not search him. The Stop, Question, and Frisk Report prepared by PO McGrath indicates that § 87(2)(b) was not searched (BR 3). § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Squad: 15

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date